

What is the Family Violence Scheme?

The Family Violence Scheme is a new specialised scheme to assist victim survivors of family violence within the fines system.

The scheme allows victim survivors to have their infringement fines withdrawn if their experience of family violence substantially contributed to the offence or it is not safe for them to nominate the responsible person.

Who is eligible for the Scheme?

To access the Family Violence Scheme, a person must:

- have been issued with an infringement notice for an offence that is included in the Family Violence Scheme, and
- demonstrate that they are a victim survivor of family violence, and
- demonstrate that the family violence substantially contributed to the person:
 - committing the offence, or
 - being unable to nominate the driver that committed the offence in a car registered to the person.

When can someone apply to access the Scheme?

A person can apply to the Family Violence Scheme at any time from first receiving the fine until:

- the fine has been paid, or
- a seven-day notice has been served on the person and the seven day period has passed or it has been waived, or
- enforcement action begins – specifically that means:
 - an attachment of earnings direction or an attachment of debts direction has been made
 - a land charge has been recorded, or
 - property has been seized under a vehicle seizure and sale notice.

Can all fines be included in a Family Violence Scheme application?

Some fines are excluded from the Family Violence Scheme. These are fines:

- issued by a court
- incurred by companies
- for offences against local council laws (other than parking fines)
- for offences that carry a high level of risk to public safety such as:
 - drink-driving, drug-driving, drink-boating, drug-boating, and similar rail safety offences
 - excessive speed (25km/h over the speed limit or more than 130km/h).

What is family violence?

The *Family Violence Protection Act 2008* defines family violence as behaviour by a person towards a family member that:

- is physically or sexually abusive
- is emotionally or psychologically abusive
- is economically abusive
- is threatening or coercive
- in any other way controls or dominates the family member and causes them to fear for their safety or wellbeing of that family member or another person, or
- causes a child to hear or witness, or otherwise be exposed to the effects of, behaviour referred to above.

What does 'substantially contributed' mean?

The requirement that the family violence 'substantially contributed' to the offence or a person's liability for the offence means there has to be a clear connection between the person's circumstances and the offending conduct or liability for it.

Examples of where family violence might have substantially contributed to an infringement offence could include:

- where a victim of family violence receives a parking fine while sleeping in their car because they were not safe at home, or
- where a victim incurred a speeding fine while escaping from an immediately dangerous situation.

Examples of where family violence might have substantially contributed to a person being unable to nominate the driver (that is, report who was driving the vehicle at the time of the offence) are:

- where the perpetrator of the family violence was the driver and it is not safe to nominate them, or
- the victim survivor was incorrectly nominated by the perpetrator as the person responsible for the fine but it is not safe to reject the perpetrator's nomination.

The above examples will not apply to every situation, and Fines Victoria will consider each Family Violence Scheme application on its own merits and on the basis of the evidence provided.

What evidence is required to support an application?

An application should provide evidence that a person was a victim of family violence and that the circumstances substantially contributed to the offence or the person's liability for it.

Evidence submitted with the application should include:

1. A statutory declaration from the applicant describing their relevant experience of family violence and how that family violence substantially contributed to them being unable to control the offending conduct, or nominate the person in control of the vehicle at the time of the offending conduct, and
2. One other piece of evidence, which satisfies the Director, Fines Victoria of the person's eligibility for the Family Violence Scheme. This additional piece of evidence can include, but is not limited to:
 - a family violence intervention order (FVIO), or
 - a family violence safety notice (FVSN), or
 - a report (which can be in the form of a letter, report, formal statement or statutory declaration) completed within the last 12 months from:
 - a case worker or social worker
 - a financial counsellor
 - a medical practitioner, a nurse, or other health practitioner
 - a psychologist
 - a family consultant or counsellor
 - a manager or coordinator of a women's refuge, crisis or counselling service
 - a school principal or school welfare coordinator
 - an officer of a child welfare authority or child protection authority
 - a police officer, or a witness statement that is made by someone other than the alleged victim to a police officer during the course of a police investigation
 - any other person that the Director, Fines Victoria considers to be appropriate, where the report demonstrates that the alleged victim was subject to family violence.

If the second piece of evidence is a report, it should include:

- full name, title and qualifications of the person giving the report
- the name of the agency or service provider that employs the person giving the report (if applicable)
- the applicant's relationship to the person giving the report, including the period of engagement
- a summary of the applicant's current life circumstances (residence, work, family etc.)
- how long the applicant has been affected by family violence
- if the applicant was affected by family violence at the time of the offence, and
- an opinion as to how the applicant's experience of family violence substantially contributed to their inability to control the offending behaviour or to nominate the actual offender.

What if Fines Victoria needs more information?

If Fines Victoria needs more information to consider an application, Fines Victoria will contact the applicant, or their authorised person, to request it. The required information must be provided within three months.

In most cases, Fines Victoria uses the applicant's preferred contact method to make contact. Some information must be provided to the applicant in writing, and it can be either posted or emailed to the applicant, or to their authorised person, depending on the applicant's preference indicated on the application form. If an applicant needs to change their preferred contact method, they should contact Fines Victoria.

What will Fines Victoria do with the information?

Fines Victoria handles applicants' information confidentially and in accordance with the *Privacy and Data Protection Act 2014*.

The applicant's information will never be shared with the perpetrator of the family violence.

If the applicant or someone else is at serious risk of harm, Fines Victoria may release the applicant's information to police or child protection for protection purposes. Fines Victoria will attempt to obtain the applicant's consent to release their information before doing so.

Submitting an application to the Family Violence Scheme

Complete the Family Violence Scheme application available at fines.vic.gov.au/fvs and attach any supporting documentation.



In person:

Fines Victoria
Ground Floor, 277 William Street
Melbourne, Victoria
Opening hours: 9am to 5pm
Monday to Friday (except public holidays)



Online:

FVS@justice.vic.gov.au



By mail:

Fines Victoria
PO Box 14487
Melbourne Victoria 8001

Need help applying?

People can call Fines Victoria on 1300 019 983, or email on FVS@justice.vic.gov.au for more information.

People can also authorise another person to apply for the Family Violence Scheme on their behalf. This authorised person can be a health practitioner, case worker, financial counsellor, lawyer, or another trusted person.

What happens if the application is successful?

If the application is successful, Fines Victoria will notify the applicant in writing using their preferred contact method.

Fines Victoria will then direct each relevant enforcement agency to withdraw the fines and take no further enforcement action. Any demerit points associated with the fines will also be withdrawn. The applicant will not have to take any further action regarding those fines.

If a person applied to the Family Violence Scheme on the basis that they are unable to nominate the responsible driver, their fines will be treated under the 'deferred nomination' option.

What is a 'deferred nomination'?

If a person applied to the Family Violence Scheme on the basis that they are unable to nominate the responsible driver, and the application was successful, the person has the option of putting the relevant fines 'on hold' for up to six months to consider whether they can nominate the driver at a later date. This is called a 'deferred nomination'.

If, after six months, the person has not nominated the responsible driver, Fines Victoria will direct each relevant enforcement agency to withdraw the fines and take no further action. Any demerit points associated with the fines will also be withdrawn.

Note: People should seek independent advice from legal practitioner and/or case worker before choosing this option.

What happens if an application is not successful?

If the application is not successful, a person **must, within 21 days of being notified:**

- pay the fine and any related fees, or
- take any other action in relation to the fine, except apply for internal review or enforcement review on the grounds of family violence.

Enforcement of the fine will resume if the person does not take any action within 21 days.

What else can Fines Victoria do if it receives a Family Violence Scheme application?

The Director, Fines Victoria has discretion to refer fines in a Family Violence Scheme application back to the enforcement agency for consideration. This will be done only in exceptional situations where:

- the applicant has made several Family Violence Scheme applications in the recent past for particularly serious offences, or for a substantial number of offences
- the enforcement agency's specialist expertise should be applied, or
- it appears that the applicant would benefit from their matters being considered by a court.

Fines Victoria will provide the applicant with at least 14 days advance notice of its intention to refer the matter to the enforcement agency. In that time, the applicant will be able to withdraw their application (to pay the fines or to enable enforcement to continue), or to make representations on why the Director should not refer the matter to the agency.

If the Director refers the matter to the enforcement agency, the agency may either:

- withdraw the infringement notice
- issue an official warning, or
- prosecute the matter in court.

What can the applicant do if they're not happy with the decision?

The person can elect to have the matter heard in court if a Notice of Final Demand has not been issued by Fines Victoria.

A person also has the right to apply to the Supreme Court for judicial review of Fines Victoria's decision, if they believe there is a legal error in the decision.

What other options are available to people affected by family violence?

Another option for victims of family violence is to apply for a review on the basis of special circumstances. Special circumstances can include an experience of family violence that meant that the person:

- didn't understand their behaviour was against the law, or
- couldn't control their behaviour (even if they knew it was against the law).

If the person has received an Infringement Notice or Penalty Reminder Notice for the offence, they can apply for a review by the agency that issued the fine. This is called an internal review. If a person applies for internal review on the basis of special circumstances because of family violence, and the internal review is unsuccessful, the person can still apply for the Family Violence Scheme.

If the person has been issued a Notice of Final Demand, they can apply for enforcement review by Fines Victoria. If a person applies for enforcement review on the basis of special circumstances because of family violence, and the enforcement review application is determined, the person is unable to then apply under the Family Violence Scheme. People should consider seeking independent legal advice before applying for enforcement review.

For information on how to apply for review under 'special circumstances', go to fines.vic.gov.au/Request-a-review